



## Exempt Action Final Regulation Agency Background Document

<b>Agency name</b>	DEPT OF MEDICAL ASSISTANCE SERVICES
<b>Virginia Administrative Code (VAC) citation</b>	12 VAC-30-20-141
<b>Regulation title</b>	Administration of Medical Assistance Services
<b>Action title</b>	Estate Recovery Update under MIPPA
<b>Final agency action date</b>	
<b>Document preparation date</b>	

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the Virginia Administrative Process Act (APA), the agency is encouraged to provide information to the public on the Regulatory Town Hall using this form.

Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act, Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Summary

*Please provide a brief summary of all regulatory changes, including the rationale behind such changes. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.*

The *Code of Virginia* (1950) as amended, § 32.1-325, grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance. The *Code of Virginia* (1950) as amended, §§ 32.1-324 and 325, authorizes the Director of DMAS to administer and amend the Plan for Medical Assistance according to the Board's requirements. The Medicaid authority as established by § 1902 (a) of the *Social Security Act* [42 U.S.C. 1396a] provides governing authority for payments for services.

This action is being promulgated pursuant to Code of Virginia § 2.2-4006(A)(4)(c), because these changes are "necessary to meet the requirements of federal law or regulations" and these "regulations do not differ materially from those required by federal law or regulation."

The purpose of this action is to update the language for 12 VAC 30-20-141 in accordance with Public Law 110-275 Section 1917(b)(1)(B)(ii), as amended by Section 115(a) of the "Medicare Improvements for Patient and Providers Act of 2008" (MIPPA). This revision prevents DMAS from pursuing estate recoveries of Medicare cost-sharing services (Medicare A & B premiums, deductibles, co-insurance, and co-payments) for Medicare/Medicaid dual eligible recipients.

The Centers for Medicare and Medicaid Services (CMS), the federal agency that administers the Medicaid program, requires all states to have in place an estate recovery program. Under this program, DMAS seeks to recover from the estate of a deceased Medicaid enrollee the costs of medical care paid for by Medicaid. This is authorized under § 1917(b)(1)(C) of the Social Security Act. Since 1995, pursuant to the Omnibus Budget Reconciliation Act of 1993 §13612 (OBRA '93), DMAS has sought estate recovery for "any items or services under the State Plan," as OBRA permitted this broad approach, which included the recovery of Medicare cost-sharing. MIPPA, however, inserted new language into the text of § 1917(b)(1)(C) prohibiting states from recovering "medical assistance for medicare cost-sharing or for benefits described in section 1902(a)(10)(E)." This translates to prohibiting DMAS from seeking to recover Medicare cost-sharing services (Medicare A & B premiums, deductibles, co-insurance, and co-payments) for Medicare/Medicaid dual eligible recipients.

This provision does not apply to: Medicare Savings Program (MSP) cost sharing benefits with a date of service that is before January 1, 2010, and benefits not related to MSP cost-sharing. Also, this MIPPA exclusion does not affect MSP cost-sharing benefits received before January 1, 2010, in the Medicaid costs that are included in a claim that was in effect at the time of the recipient's death, regardless of the date the claim was initiated or the date of the recipient's death.

DMAS mirrors its Virginia Administrative Code with federally required State Plan language in Chapters 10-90. At the time that the Estate Recovery Updates were made to the state Medicaid regulations in response to MIPPA of 2008, this prohibition was not added to 12VAC 30-20-141. This action corrects that oversight.

As stated above, these regulations follow the prescribed federal requirements from which they do not materially differ. This action is therefore in conformity with Code of Virginia § 2.2-4006(A)(4)(c) as an exempt final action.

**Statement of final agency action**

*Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.*

I hereby approve the foregoing Agency Background document with the attached amended regulations: Administration of Medical Assistance Services: Estate Recovery Update (12 VAC 30-20-141), and adopt the action stated therein. I certify that this final regulatory action has completed all the requirements of the Code of Virginia §2.2-4012, of the Administrative Process Act.

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Date

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Cynthia B. Jones, Director

Dept. of Medical Assistance Services

### Family impact

*Assess the impact of this regulatory action on the institution of the family and family stability.*

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These changes do not strengthen or erode the authority or rights of parents in the education, nurturing, and supervision of their children; or encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents. It does not strengthen or erode the marital commitment.